

**Notice of Allowability**

Application No.

10/027,429

Applicant(s)

BAYS, ROBERT JAMES

Examiner

Roberta A. Shand

Art Unit

2616

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed December 19, 2001.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4/8/04 8/7/03 9/6/02 12/01
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
- ☒ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other \_\_\_\_\_

*Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-30, drawn to distribution of traffic flows across a plurality of nodes via load balancing, classified in class 370, subclass 238.
  - II. Claims 31-37, drawn to a routing policy facilitating next hop, classified in class 370, subclass 400.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are directed to related products. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, Group I is directed to a distribution of traffic flows across routing peers using load balancing comprising assigning a routing peer to all destination networks and setting a traffic flow weighting value to the traffic flow statistic value associated with the destination network. Group II is directed to facilitating the control of routing comprising associating a path including one routing peer as the next hop with a subnet of the destination network and removing an injected path from the routing the routing system, if the routing peer in the injected path withdraws the route to the destination network. The inventions involve routing data through a network in two distinctly different ways.

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3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mark Spolyar on Friday, June 23, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-30.

5. Affirmation of this election must be made by applicant in replying to this Office action.

6. Claims 31-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### **EXAMINER'S AMENDMENT**

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

8. Authorization for this examiner's amendment was given in a telephone interview with Mark Spolyar on Friday, June 23, 2006.

The application has been amended as follows:

**Claims 31-37 are canceled.**

### ***Allowable Subject Matter***

9. The following is an examiner's statement of reasons for allowance: the prior art does not teach or fairly suggest a method facilitating the distribution of traffic flows across a plurality of routing peers, the traffic flows transmitted from a first computer network to hosts associated with respective destination networks, and wherein there is at least one path from the first computer network to each destination network, the method comprising the steps of monitoring traffic flows from a first computer network to a plurality of respective destination networks; generating an ordered list of destination networks based on a traffic flow Statistic value associated with each destination network, for each destination network in the ordered list, associating the routing peers having reachability to the destination network; and iteratively performing a load balancing

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cycle until all destination networks have been assigned a routing peer, the load balancing cycle comprising: for a first routing peer: selecting the first unassigned destination network to which the first routing peer has reachability and assigning the selected destination network to the first routing peer; and setting a traffic flow weighting value to the traffic flow statistic value associated with the selected destination network; for each subsequent routing peer: selecting the first unassigned destination network to which the routing peer has reachability; assigning the selected destination network to the routing peer; repeating the Selecting step until the traffic flow statistic values associated with the selected destination networks aggregate beyond a threshold level derived from the traffic flow weighting value; and assigning the Selected destination networks) to the routing peer, as recited in independent claims 1, 15 and 16.

10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberta A. Shand whose telephone number is 571-272-3161.

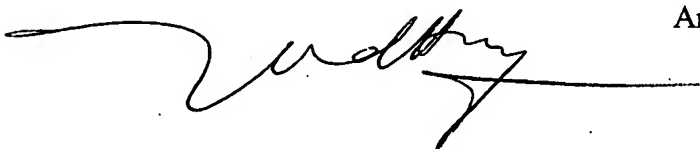
The examiner can normally be reached on M-F 9:00am-5:30pm.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Roberta A Shand  
Examiner  
Art Unit 2616



HUY D. VU  
SUPERVISORY PATENT EXAMINER  
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